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APR 26 2007

OFFICE OF PETITIONS

In re Application of :
Jeppesen et al. : DECISION ON PETITION
Application No. 10/692,561 :
Filed: October 24, 2003 :
Atty Docket No. 6598.200-US :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed January 9, 2007.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(b)."

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed November 23, 2005. The Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered timely filed and no extension of time considered obtained, the application became abandoned effective February 24, 2006. A courtesy Notice of Abandonment was mailed on July 6, 2006. By decision mailed November 22, 2006, a prior PETITION FOR WITHDRAWAL OF A HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a) filed August 29, 2006 was

dismissed. Applicants failed to show that a timely and proper response was filed to the Office action.

In response, applicants filed the instant petition. However, although the petition (submitted by facsimile) states that a fee payment is enclosed, no fee payment is among the papers received with the petition. In addition, the record does not include an authorization to charge such a fee to a Deposit Account.

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 C.F.R. § 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 C.F.R. § 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. § 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 C.F.R. § 1.17(l) or 1.17(m), regardless of whether the petition under 37 C.F.R. § 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 C.F.R. § 1.137 lacking the requisite petition fee.

By prior decision, it was determined that withdrawal of the holding of abandonment was not warranted. This decision stands. Thus, the petition fee is required to consider revival. The Office does not have the authority to waive this fee. As payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of an abandoned application and petitioner has not made such a payment, the petition must be dismissed without consideration on the merits under § 1.137.

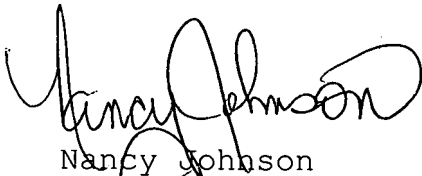
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
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By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
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Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is stylized with a large, looping initial "N" and a cursive "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions